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*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

RALPH SACZAWA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

AUDIOEYE, INC., NATHANIEL  
BRADLEY, AND EDWARD O'DONNELL

Defendants

) CASE NO.

) **CLASS ACTION**

) COMPLAINT FOR:

) 1. Violation of the Securities Exchange  
Act of 1934.

) JURY TRIAL DEMANDED

Plaintiff alleges the following upon personal knowledge as to his own acts. The remaining allegations are made upon information and belief based on an investigation conducted by Plaintiff's counsel, which included, among other things, a review of the facts and circumstances alleged herein, including, without limitation: (a) review and analysis of certain filings made by AudioEye, Inc. with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of certain press releases, public statements, news articles, and other publications disseminated by or concerning Defendants herein and related parties; (c) review and analysis of certain press conferences, analyst conference calls and conferences, and the corporate website of AudioEye, Inc.; and (d) a review and analysis of certain other information, documents, and materials concerning AudioEye, Inc., and the other Defendants named herein. Plaintiff believes that further substantial evidentiary support will exist for the allegations herein after a reasonable opportunity for discovery. Many of the facts supporting the allegations contained herein are known only to Defendants or are exclusively within their custody and/or control.

#### **NATURE OF THE ACTION AND OVERVIEW**

1. Plaintiff brings this action individually and on behalf of a class of persons who purchased or otherwise acquired the securities of Defendant AudioEye, Inc. (the "Class") from May 5, 2014 to April 1, 2015 (the "Class Period") and were damaged thereby, seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. AudioEye is the creator of patented audio browsing and automated publishing and accessibility technology platforms that create voice-driven technologies to enhance the mobility, usability, and accessibility of Internet-based content in the United States. The company develops patented, Internet content publication and distribution software that enables conversion of any media into accessible formats, and allows for real-time distribution on any Internet-connected device. It serves "...private- and public-sector..." customers, such as corporate publishers; consumer Websites; federal, state, and local governments and agencies; and mobile advertisers.

3. On April 1, 2015, AudioEye shocked investors when it announced that its previously issued financial statements for the quarters ended March 31, June 30, and September 30, 2014, will be restated due to improper accounting. Furthermore, AudioEye stated that its preliminary earnings release issued by the Company on January 12, 2015, relating to the quarter and year ended December 31, 2014, should no longer be relied upon.

4. Upon the release of this news, the Company's shares declined approximately 25%, or \$.11 per share, to close on April 1, 2015 at \$.305 per share.

5. The Complaint alleges that, throughout the Class Period, defendants failed to disclose material adverse facts about the Company's financial well-being. Specifically, defendants failed to disclose or indicate the following: (1) that the Company improperly accounted for all revenue from non-cash exchanges of a license of the Company for services of the Company's customer; (2) that the Company lacked adequate internal and financial controls; and (3) that, as a result of the foregoing, the Company's financial statements were materially false and misleading at all relevant times.

6. As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class Members have suffered significant losses and damages.

### **PARTIES**

7. Plaintiff Ralph Saczawa purchased AudioEye, Inc., common stock at artificially inflated prices during the Class Period, as set forth in the accompanying certification, and lost money as a result of Defendants' wrongdoing.

8. Defendant AudioEye, Inc. ("AudioEye" or the "Company") is a corporation organized and existing under the laws of the state of Delaware, with its headquarters and principal place of business located at 5210 E. Williams Circle, Suite 500, Tucson, Arizona 85711. AudioEye's common stock is traded on the OTC.

9. Defendant Nathaniel Bradley ("Bradley") was at all relevant times herein the Chief Executive Officer ("CEO") of AudioEye.



15. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the U.S. mails, interstate telephone communications, and the facilities of national securities exchanges.

## **SUBSTANTIVE ALLEGATIONS**

### **BACKGROUND**

16. AudioEye is the creator of patented audio browsing and automated publishing and accessibility technology platforms that create voice-driven technologies to enhance the mobility, usability, and accessibility of Internet-based content in the United States. The company develops patented, Internet content publication and distribution software that enables conversion of any media into accessible formats, as well as allows for real-time distribution on any Internet-connected device. Its solutions and services enable users of AudioEye-enabled customers' Websites or mobile environments to transact, communicate, and engage with products, brands, and content using its patented interactive voice technologies. The company offers Audio Internet, a software-as-a service technology platform to Internet and mobile publishers, developers, owners, and operators. It serves private- and public-sector customers, such as corporate publishers; consumer Websites; federal, state, and local governments and agencies; and mobile advertisers.

### **DEFENDANTS' FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD**

17. The Class Period begins on May 5, 2014. On that date the Company issued a press release entitled "AudioEye Inc., Expects First Quarter Revenue to More Than Quadruple to Over \$1.0 Million vs. \$.02 Million in Prior Year Period." Therein, the Company stated in relevant part:

TUCSON, AZ--(Marketwired - May 5, 2014) - AudioEye®, Inc. (OTCQB: AEYE) ("AudioEye"), creator of the Audio Internet® patented audio browsing and automated publishing technology platform, today announced that it expects to report revenue in excess of \$1.0 million for the first quarter of 2014. AudioEye also announced that it will host a first quarter 2014 earnings investor conference call at 11:00 a.m. Eastern Time on Thursday, May 15, 2014 (details provided below).

This represents a sequential increase in recognizable revenue of approximately 33% relative to revenue of \$752,092 in the fourth quarter of 2013 and an increase of more than 345% when compared with revenue of \$224,297 in the prior-year quarter.

In addition to top line revenue growth, AudioEye maintained gross profit margins of approximately 75% of sales in the first quarter of 2014.

AudioEye also achieved the following key milestones during the first quarter of 2014:

Developed an enterprise and government sales pipeline that management believes will provide the necessary foundation to establish AudioEye as the leading solutions provider, thought leader and largest producer in the multi-billion dollar technology accessibility compliance market.

Ended the quarter with an enterprise and government sales pipeline in excess of \$50 million of identified opportunities now under various stages of contract negotiation, management, development and AudioEye's sales process.

Launched its 2014 U.S. government partnership sales and business development initiative and signed contracts with several large well-regarded reseller partners to accelerate the accomplishment of strategic sales goals.

Developed revenue producing technology licensing contracts and launched sales activities within the behavioral healthcare, U.S. government and enterprise markets.

Established state government sales initiative and promoted Richard Keppler to a dedicated sales role focused on the governments of the 50 U.S. states.

Received \$3.5 million of additional equity growth financing at the beginning of the quarter.

Trading in AEYE shares transitioned from the OTC BB to the OTC US market effective February 13, 2014.

Commenced the process and steps necessary to up list the Company's common stock to the NASDAQ Capital Market as soon as practicable.

Launched its Audio Internet® Version 5.0 Platform.

Installed Audio Internet® 5.0 onto the University of Arizona's website.

Named Paul Arena as AudioEye's Executive Chairman.

Welcomed Sandy Purcell as the newest independent member of the Company's Board of Directors.

"Our first quarter revenue growth enhances our confidence in AudioEye's business strategy and its patented technology, which solves critical Internet and mobile content accessibility issues for our clients," stated Nathaniel Bradley, the Company's Chief Executive Officer. "Our expanding team of technology and sales professionals is focused on achieving our goals for 2014. Revenue for the

1 first fiscal quarter ended March 31, 2014 exceeded \$1.0 million, an increase of  
 2 more than 345% from prior-year quarterly revenue of \$224,297. The annualized  
 3 revenue ‘run rate’ in the first quarter exceeded \$4 million. We reiterate our  
 4 revenue guidance for the current year and believe the Company should achieve an  
 5 annualized revenue ‘run rate’ of \$8 million or higher within the next two quarters.  
 6 Our proprietary patented technology is transforming the accessibility of Internet  
 7 websites by significantly reducing the time and other resources that publishers  
 8 must invest to become compliant with federal mandates.”

9 “Customers are demanding more from us, and we believe that our team is meeting  
 10 that demand with exceptional service and highly scalable technology solutions  
 11 delivered through the Audio Internet® platform, which is now capable of meeting  
 12 and exceeding our customers’ accessibility, mobility and usability needs,”  
 13 continued Bradley. “The growth and broader utilization of AudioEye’s Audio  
 14 Internet® platform is bringing about a more accessible Internet experience, and  
 15 this is a source of great pride among our team members, stakeholders and  
 16 partners. We have successfully executed intellectual property licenses within the  
 17 U.S. government and behavioral healthcare markets. We continue to improve  
 18 upon our patented technology, grow our clientele and further position the  
 19 Company for success. Our first quarter performance brings our objective of  
 20 creating a robust Audio Internet even closer to fruition

## 21 **Forward-Looking Statements**

22 This release includes forward-looking statements contained within Section 27A of  
 23 the Securities Act of 1933, as amended, and Section 21E of the Securities  
 24 Exchange Act of 1934, as amended. All statements regarding the Company’s  
 25 expected future financial position, results of operations, cash flows, financing  
 26 plans, business strategy, products and services, competitive positions, growth  
 27 opportunities, plans and objectives of management for future operations, as well  
 28 as statements that include words such as “anticipate,” “if,” “believe,” “plan,”  
 “estimate,” “expect,” “intend,” “may,” “could,” “should,” “will,” and other  
 similar expressions are forward-looking statements. All forward-looking  
 statements involve risks, uncertainties and contingencies, many of which are  
 beyond the company’s control, which may cause actual results, performance, or  
 achievements to differ materially from anticipated results, performance, or  
 achievements. Factors that may cause actual results to differ materially from those  
 in the forward-looking statements include those set forth in the AudioEye’s Form  
 10-K and other reports filed with the SEC. AudioEye is under no obligation to  
 (and expressly disclaims any such obligation to) update or alter its forward-  
 looking statements, whether as a result of new information, future events or  
 otherwise.

18. On May 5, 2014, AudioEye filed its Quarterly Report with the SEC on Form  
 10-Q for the 2014 first fiscal quarter. The Company’s 10-Q was signed by defendant Bradley  
 and reaffirmed the Company’s financial results previously announced on May 5, 2014.

19. The Company’s 10-Q filed on May 15, 2014, also contained Sarbanes-Oxley  
 required certifications, signed by defendant Bradley, who stated:

20. I, Nathaniel Bradley, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AudioEye, Inc.;



2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15-d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.



21. On August 11, 2014, AudioEye issued a press release titled “AudioEye, Inc. Reports Net Income of \$1.0 Million on Revenue of \$3.0 Million for Second Quarter of 2014.

22. Therein, the Company stated, in relevant part:

Highlights of the second quarter and the period subsequent to the end of June 30, 2014 include the following:

The Company secured approximately \$1 million in contracts with leading national health care companies during the second quarter of 2014.

The Company executed licenses for its technology with organizations involved in the consumer packaged goods (CPG), retail and couponing, and online job posting verticals during the most recent quarter.

The Company initiated a pilot program to audio-enable websites for one of the largest telecommunications companies in the U.S.

The Company executed customer applications involving security, container tracking, mobile asset monitoring, GPS tracking and mobile communications within the logistics, transportation, maritime, shipping, vending, trucking, rail and freight industries.

The Company has identified opportunities and is involved in discussions with over 50% of all federal government agencies regarding the procurement of its services.

The Company has identified opportunities and is involved in early discussions with numerous state, local and municipal governments for the procurement of its services.

The Company has obtained scope of work parameters and identified business opportunities with multiple professional sports teams/leagues, one of the largest biopharmaceutical companies in the U.S., and numerous other enterprises that are expected to result in contract signings over the next several months.

The Company has contracted its services out to several non-profit advocacy groups that are involved with the disabled community.

Warrants for approximately 10 million shares of the Company’s common stock were exercised for cash by insider and existing investors.

The Company increased the amount of cash available to approximately \$3.1 million at the time of this release.

The Company expects to be cash flow positive before year-end.

The Company has engaged a commercial specialist from the U.S. Department of Commerce, U.S. Global Markets Agency and their

1 counterparts in U.S. embassies abroad to engage in the study,  
2 strategy and development of targeted International markets.

3 The Company upgraded its platform technologies to introduce its  
4 proprietary Real-Time Auto-Discovery & Enablement feature,  
5 which allows AudioEye to greatly streamline the onboarding  
6 process of new customers, while providing additional solution  
7 flexibility.

8 The Company welcomed Congressman Tony Coelho and Matthew  
9 Mellon as the newest independent members of its Board of  
10 Directors.

11 The Company has developed five new patents covering new  
12 inventions in the areas of interactive networked voice technology,  
13 voice analytics, real-time content normalization and auto discovery  
14 technologies.

15 The Company has developed and is executing a strategy to apply  
16 its patented voice technology platform in the field of virtual  
17 currency payments processing

18 23. On July 25, 2014, AudioEye filed its Quarterly Report with the SEC. The  
19 Company's 10-Q was signed by the Individual Defendants, and reaffirmed the Company's  
20 financial results previously announced that day. The Company's 10-Q also contained Sarbanes  
21 Oxley required certifications, substantially similar to the certifications contained in ¶ 19, *supra*.

22 24. On November 10, 2014, AudioEye issued a press release titled "AudioEye, Inc.  
23 Reports Record Third Quarter Net Income of \$1.3 Million on Revenue of \$4.8 Million."

24 25. Therein, the Company stated, in relevant part:

25 Revenue for the three months ended September 30, 2014 totaled  
26 \$4,837,411, which represented a 1,168% increase when compared  
27 with revenue of \$381,539 in the third quarter of 2013. On a  
28 sequential basis, revenue for the third quarter of 2014 increased  
61% when compared with revenue of \$3,013,033 in the second  
quarter of 2014.

The Company's annualized revenue "run rate" in the third quarter  
of 2014 approximated \$19.3 million.  
AudioEye executed contracts valued at approximately \$5.3 million  
during the most recent quarter, compared with contracts valued at  
approximately \$2.9 million that were executed in the second  
quarter of 2014.

Costs of services totaled \$1,084,988 in the third quarter of 2014,  
compared with \$130,771 in the quarter ended September 30, 2013.  
Gross profit of \$3,752,423 in the third quarter of 2014 compared  
with gross profit of \$250,768 in the prior-year quarter. Gross profit  
margin approximated 78% of sales in the most recent quarter,

1 compared with approximately 66% of sales in the prior-year period  
2 and 89% of sales in the quarter ended June 30, 2014.

3 Selling and marketing costs for the three months ended September  
4 30, 2014 and 2013 totaled \$546,265 and \$117,893, respectively.  
Such costs totaled \$1,301,365 and \$167,509 for the nine months  
5 ended September 30, 2014 and 2013, respectively.

6 Research, technology and development costs for the three and nine  
7 months ended September 30, 2014 totaled \$153,188 and \$391,958,  
8 respectively. No such expenses were recorded in the prior-year  
9 periods.

10 General and administrative (“G&A”) expenses totaled \$1,548,581  
11 in the most recent quarter, compared with \$889,095 in the third  
12 quarter of 2013. For the first nine months of 2014, G&A expenses  
13 totaled \$4,352,398, versus \$1,880,726 in the year-earlier period.

14 The increases were primarily related to changes in staffing, legal,  
15 stock option and warrant expense as well as other expense  
16 categories necessary to support AudioEye’s growth.

17 On a sequential basis, G&A expenses increased to \$1,548,851 in  
18 the third quarter of 2014 when compared with \$1,135,947 in the  
19 second quarter of 2014.

20 Depreciation and amortization expense for the three months ended  
21 September 30, 2014 and 2013 totaled \$189,602 and \$89,823,  
22 respectively. For the first nine months of 2014, depreciation and  
23 amortization expense totaled \$462,326, versus \$269,135 in the  
24 corresponding period of the previous year.

25 For the three months ended September 30, 2014, AudioEye  
26 recorded net income of \$1,302,101, or \$0.02 per diluted share,  
27 compared with a prior-year net loss of (\$870,810), or (\$0.02) per  
28 share. For the nine months ended September 30, 2014, the  
Company reported a net profit of \$894,970, or \$0.02 per diluted  
share, versus a net loss of (\$1,796,796), or (\$0.04) per share in the  
nine months ended September 30, 2013.

SaaS and development revenue for the three months ended  
September 30, 2014 totaled \$561,286, which represented a 47%  
increase when compared with similar revenue of \$381,539 in the  
third quarter of 2013. On a sequential basis, intellectual property  
 (“IP”) licensing revenue totaled \$4,275,000 in the third quarter of  
2014, for an increase of 46% when compared with IP revenue of  
\$2,925,000 in the second quarter of 2014.

“We are establishing AudioEye’s patented accessibility technology  
platform within key strategic market verticals and proving out our  
revenue model in each,” stated Nathaniel Bradley, the Company’s  
Chief Executive Officer. “We will now transition to scaling these  
opportunities with a focus on providing the highest quality  
solutions for our customers. While the adoption of our technology  
by multiple federal, state and local government agencies has been

1 achieved, we have also developed corporate verticals that provide  
 2 efficacy and reference accounts that are now being leveraged in  
 support of our continued rapid growth.” Emphasis added.

3  
 4 26. On November 11, 2014, AudioEye filed its Quarterly Report with the SEC. The  
 5 Company’s 10-Q was signed by defendants Bradley and O’Donnell, and reaffirmed the  
 6 Company’s financial results previously announced that day. The Company’s 10-Q also  
 7 contained Sarbanes Oxley required certifications, substantially similar to the certifications  
 contained in ¶ 19, *supra*.

8  
 9 27. On January 12, 2015, AudioEye issued a press release entitled “AudioEye to  
 Report Profitable Fourth Quarter on Revenue of \$3.25 Million.”

10  
 11 28. Therein, the Company stated, in relevant part:

Bookings for the third and fourth quarters of 2014 approximated  
 \$5.3 million and \$4.7 million, respectively. Approximately \$1.0  
 million, or 19% of total third quarter bookings represented cash  
 contracts, and \$2.46 million, or 52% of total fourth quarter  
 bookings consisted of cash contracts, an increase of 146%.

14 AudioEye recently closed on a private placement of equity  
 consisting of 6,687,500 units, which generated gross proceeds to  
 the Company of approximately \$2.675 million.

15 The Company expects to report at least \$3.25 million in revenue  
 16 for the three months ended December 31, 2014. This compares  
 with approximately \$0.75 million in the prior-year quarter,  
 17 representing a year-over-year increase of more than 332%.  
 Revenue for the twelve months ended 2014 and 2013  
 18 approximated \$12 million and \$1.56 million, respectively,  
 representing a year-over-year increase of more than 665%. Based  
 19 on information currently available, the Company expects to be  
 profitable for the year ended December 31, 2014.

20 Over \$4.7 million in aggregate contracts were booked during the  
 21 fourth quarter of 2014. As of December 31, 2014, the Company  
 had unbilled contracts totaling over \$1.8 million that will become  
 22 recognized revenues in 2015.

23 Monetary contracts executed as a result of the Company’s  
 intellectual property licensing strategy increased more than 140%,  
 24 from \$1 million in the third quarter of 2014 to over \$2.4 million in  
 the fourth quarter of 2014.

25 Recognized cash revenue for the three months ended December 31,  
 26 2014 totaled over \$1 million, representing an increase of more than  
 81% relative to cash revenue of \$0.56 million for the quarter ended  
 27 September 30, 2014.

1 The annualized bookings “run rate” for the most recent quarter  
2 exceeded \$18 million.

3 Anticipated operating receipts of cash payments of over \$2 million  
4 at the beginning of the first quarter of 2015 should result in cash on  
hand in excess of \$4 million, the strongest cash position to begin  
any year in the Company’s history.

5 Projected and budgeted expenses for the first quarter of 2015  
6 should be exceeded by cash inflows from operations. As a result,  
management believes that AudioEye will become operating cash  
7 flow positive during the quarter ending March 31, 2015.

8 “We are very excited that we have access to more capital than at  
any time in our history and look forward to becoming operating  
9 cash flow positive in the first quarter of 2015, which is a triumph  
for our team,” stated Nathaniel Bradley, Chief Executive Officer of  
AudioEye, Inc.”

10 29. The statements set forth in paragraphs 17 through 28 were materially false and  
11 misleading when made because Defendants failed to disclose or indicate the following: (1) that  
12 the Company improperly accounted for all revenue from non-cash exchanges of a license of  
13 the Company for services of the Company’s customer; (2) that the Company lacked adequate  
14 internal and financial controls; and (3) that, as a result of the foregoing, the Company’s  
15 financial statements were materially false and misleading at all relevant times.

16 30. THE TRUTH IS REVEALED

17 31. On April 1, 2014, Defendants issued a press release entitled “AudioEye  
18 Announces That Financial Statements and Previously Issued Guidance for Fourth Quarter and  
19 FY2014 Cannot Be Relied on and That Material Restatements Will Be Forthcoming.” In that  
20 release Defendants, gave investors a preview of the truth. Specifically, Defendants stated:

21 AudioEye, Inc. (OTCQB: AEYE) (“AudioEye” or the  
22 “Company”) today announced that on March 26, 2015, the Audit  
23 Committee of the Company’s Board of Directors, based in part on  
24 the recommendation of the Company’s management and in  
25 consultation with the Company’s auditors and advisors, concluded  
that because of errors identified in the Company’s previously  
issued financial statements, the Company will restate its previously  
issued financial statements for the quarters ended March 31, June  
30 and September 30, 2014.

26 The Audit Committee also authorized an internal review of  
27 controls and policies. Accordingly, investors should no longer rely  
28 upon the Company’s previously released financial statements or  
other financial data for these periods, including any interim period  
financial statements, and any earnings releases relating to these

1 periods. In addition, investors should no longer rely on the  
2 preliminary earnings release issued by the Company on January  
3 12, 2015 relating to the quarter and year ended December 31,  
4 2014.

5 The Company also announced that it will host an investor  
6 conference call at 2:30 p.m. Eastern Time today, Wednesday, April  
7 1, 2015 (see details below).

#### 8 FINANCIAL STATEMENT ISSUES

9 Based on the review to date, the Company anticipates removing all  
10 revenue derived from non-cash exchanges of a license of the  
11 Company for the license of the Company's customer and all  
12 revenue from non-cash exchanges of a license of the Company for  
13 services of the Company's customer, and reducing by a material  
14 amount previously reported license cash revenue. The aggregate  
15 amount of revenue reported for the first nine months of 2014 for  
16 non-cash transactions was approximately \$8,100,000. The reversal  
17 of revenue from the non-cash exchange transactions will also  
18 impact additional accounts, including reductions in Prepaid Assets,  
19 Intangible Assets and Amortization Expense. The Company also  
20 expects that certain expenses will be reclassified. Additional  
21 adjustments may be identified pursuant to the outcome of the  
22 ongoing review and analysis. The Company has also begun a  
23 review of calendar year 2013 activity to determine whether there  
24 are any adjustments that may impact previously issued financial  
25 statements. There are no known adjustments to 2013 financials at  
26 this time. The cash balance is not impacted by these changes.

27 The Company, along with its advisors and outside accountants,  
28 continues to perform its review in order to conclude and quantify  
the impacts of the above issues upon financial statements. The  
Company expects to complete this process and file its restated  
financial statements over the course of the next several weeks. The  
Company does not expect to timely file its Form 10-K for calendar  
year 2014 or its Form 10-Q for the quarter ended March 31, 2015.  
Subject to the completion of the audit and the restatement of  
previously issued financial statements, the Company expects to be  
timely with its filing of the Form 10-Q for the quarter ended June  
30, 2015.

In accordance with Section 404 of the Sarbanes-Oxley Act of  
2002, the Company's management has been assessing the  
effectiveness of the Company's internal controls involving  
financial reporting and disclosure. Based on this assessment, the  
Company expects to report material weaknesses in the Company's  
internal controls and therefore conclude that internal controls over  
financial reporting and disclosure are not effective.

The Audit Committee and management have discussed the matters  
described herein, which will also be disclosed in a Current Report  
on Form 8-K to be filed with the SEC today, with MaloneBailey,  
LLP, the Company's independent registered public accounting  
firm.

#### 28 NEW CHIEF FINANCIAL OFFICER HIRED



Effective March 29, 2015, the Company appointed Donald Weinstein as Chief Financial Officer (“CFO”). Mr. Weinstein will fulfill the CFO role pursuant to an Interim Services Agreement dated March 29, 2015 between the Company and Randstad Professionals US, LP, d/b/a Tatum (“Tatum”) (the “Services Agreement”).

Also, effective March 29, 2015, Edward O’Donnell resigned his position as the Company’s Chief Financial Officer.

Mr. Weinstein, 50, has worked for Tatum, an executive staffing firm, since March 2015. From July 2013 through February 2015, Mr. Weinstein served as CFO of AccessMedia 3. From September 2004 until July 2013, Mr. Weinstein was self-employed as a contract Chief Financial Officer, primarily for private-equity-backed, middle-market companies including Woods Restoration Services, TextbookX.com and BountyJobs, Inc. Prior experience includes serving as Executive Vice President and Chief Financial Officer of MasTec, Inc., a New York Stock Exchange-listed company, and as Senior Vice President and Chief Financial Officer of AGL Resources, Inc., a New York Stock Exchange-listed company and the largest U.S. natural gas distribution company. Mr. Weinstein holds a Bachelor’s degree in Accounting from the University of Connecticut.

#### FIRST QUARTER 2015 CASH BOOKINGS

The Company announced that cash bookings for the quarter ended March 31, 2015 are expected to approximate \$2.0 million.

#### MANAGEMENT COMMENTS

“With great care and expediency, we are committed to both restate our financial statements and cure the control and process issues that created the need for the restatements,” said Carr Bettis, Executive Chairman of AudioEye, Inc. “At its core, AudioEye is a technology company with the most complete and functional accessibility solutions available. We are very pleased with feedback from our customers, and our mandate is to pursue with a laser-like focus additional sales, increasing customer adoption rates, and the enhancement of Internet accessibility for all users.”

#### INVESTOR CONFERENCE CALL

The Company will host an investor conference call at 2:30 p.m. Eastern Time (EDT) today, Wednesday, April 1, 2015, to further discuss information disclosed in this news release, as further detailed in a Current Report on Form 8-K to be filed by the Company today.

#### FORWARD-LOOKING STATEMENTS

This release includes forward-looking statements contained within Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements regarding AudioEye’s expected future financial



position, results of operations, cash flows, financing plans, business strategy, products and services, competitive positions, growth opportunities, plans and objectives of management for future operations, as well as statements that include words such as “anticipate,” “if,” “believe,” “plan,” “estimate,” “expect,” “intend,” “may,” “could,” “should,” “will” and other similar expressions, are forward-looking statements. All forward-looking statements involve risks, uncertainties and contingencies, many of which are beyond AudioEye’s control, which may cause actual results, performance, or achievements to differ materially from anticipated results, performance, or achievements. Factors that may cause actual results to differ materially from those in the forward-looking statements include those set forth in AudioEye’s Form 10-K and other report filings with the SEC. AudioEye is under no obligation to (and expressly disclaims any such obligation to) update or alter its forward-looking statements, whether as a result of new information, future events or otherwise. *Emphasis added.* [add a paragraph about how material the \$8M is in light of the financials].

32. Upon the release of this news, the Company’s shares declined approximately \$.11 per share, or 25 percent, to close on April 1, 2015, at \$.305 per share.

### **ALLEGATIONS REGARDING SCIENTER**

33. As alleged herein, Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of information reflecting the true facts regarding AudioEye, their control over, and/or receipt and/or modification of AudioEye’s allegedly materially misleading misstatements and/or their associations with the Company, which made them privy to confidential proprietary information concerning AudioEye, participated in the fraudulent scheme alleged herein.

### **CLASS ACTION ALLEGATIONS**

34. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of a class (the “Class”) of all persons who purchased or otherwise acquired AudioEye securities during the period from May 5, 2014 to April 1, 2015,

1 inclusive (the “Class Period”) and who were damaged thereby. Excluded from the class are  
2 Defendants, the officers and directors of the Company at all relevant times, members of their  
3 immediate families and their legal representatives, heirs, successors, or assigns, and any entity  
4 in which Defendants have or had a controlling interest.

5 35. The members of the Class are so numerous that joinder of all members is  
6 impracticable. Throughout the Class Period, AudioEye’s securities were actively traded on the  
7 OTC. While the exact number of Class members is unknown to Plaintiff at this time and can  
8 only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or  
9 thousands of members in the proposed Class. Record owners and other members of the Class  
10 may be identified from records maintained by AudioEye or its transfer agent and may be  
11 notified of the pendency of this action by mail, using the form of notice similar to that  
12 customarily used in securities class actions.

13 36. Plaintiff’s claims are typical of the claims of the members of the Class as all  
14 members of the Class are similarly affected by Defendants’ wrongful conduct in violation of  
15 federal law that is complained of herein.

16 37. Common questions of law and fact exist as to all members of the Class and  
17 predominate over any questions solely affecting individual members of the Class. Among the  
18 questions of law and fact common to the Class are:

19 (a) whether the federal securities laws were violated by Defendants’ acts as  
20 alleged herein;

21 (b) whether statements made by Defendants to the investing public during the  
22 Class Period misrepresented material facts about the business, operations, and management of  
23 AudioEye; and

24 (c) the extent to which members of the Class have sustained damages and the  
25 proper measure of damages.

26 38. Plaintiff will fairly and adequately protect the interests of the members of the  
27 Class and has retained counsel competent and experienced in class and securities litigation.  
28

1           39. A class action is superior to all other available methods for the fair and efficient  
2 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as  
3 the damages suffered by individual Class members may be relatively small, the expense and  
4 burden of individual litigation makes it impossible for members of the Class to individually  
5 redress the wrongs done to them. There will be no difficulty in managing this action as a class  
6 action.

7  
8                                   **CAUSATION AND ECONOMIC LOSS**

9           40. As described herein, during the Class Period, Defendants made or caused to be  
10 made a series of materially false or misleading statements about AudioEye's financial,  
11 investment and business condition, business practices, and financial and business results,  
12 prospects, and operations. These material misstatements and omissions had the cause and  
13 effect of creating in the market an unrealistically positive assessment of AudioEye's financial,  
14 investment and business condition, results, prospects, and operations, thus causing the  
15 Company's common stock to be overvalued and artificially inflated at all relevant times.  
16 Defendants' materially false and misleading statements during the Class Period were widely  
17 disseminated to the securities markets, investment analysts, and to the investing public, and  
18 resulted in Plaintiff and other members of the Class purchasing the Company's common stock  
19 at artificially inflated prices. Moreover, upon the revelation to the market and the investing  
20 public of the truth concerning AudioEye and its results, operations, and financial position, the  
21 market price of AudioEye common stock declined substantially, resulting in significant  
22 damages to the Plaintiff and other shareholders.

23           41. Had the truth about AudioEye been revealed to the market earlier, Plaintiff and  
24 the Class would not have purchased AudioEye common stock or would have purchased the  
25 stock only at lower prices.

26           42. When the truth about AudioEye was finally fully revealed, a significant portion  
27 of the artificial inflation that had been caused by Defendants' false and misleading statements  
28 (and omissions) was eliminated from the price of AudioEye's common stock, causing  
significant losses to Plaintiff and the Class.

1           43. Defendants' conduct, as alleged herein, proximately caused foreseeable losses  
2 to Plaintiff and the other members of the Class.

3           44. The market for AudioEye's securities was open, well-developed, and efficient at  
4 all relevant times for the following reasons (among others):

5                   (a) The Company's shares met the requirements for listing, and were listed  
6 and actively traded on OTC;

7                   (b) As a regulated issuer, AudioEye filed periodic public reports with the  
8 SEC;

9                   (c) AudioEye regularly communicated with public investors via established  
10 market communication mechanisms, including through regular disseminations of press releases  
11 on the national circuits of major newswire services and through other wide-ranging public  
12 disclosures, such as communications with the financial press and other similar reporting services;

13                   (d) The market reacted to public information disseminated by AudioEye;

14                   (e) AudioEye was followed by numerous securities analysts employed by  
15 major brokerage firms who wrote reports that were distributed to the sales force and certain  
16 customers of their respective brokerage firms. Each of these reports was publicly available and  
17 entered the public marketplace;

18                   (f) The material misrepresentations and omissions alleged herein would tend  
19 to induce a reasonable investor to misjudge the value of AudioEye's securities; and

20                   (g) Without knowledge of the misrepresented or omitted material facts,  
21 Plaintiff and the other members of the Class purchased or otherwise acquired AudioEye's  
22 securities between the time Defendants made the material misrepresentations and omissions,  
23 during which time the price of AudioEye's securities was inflated by Defendants'  
24 misrepresentations and omissions.

25           45. As a result of the foregoing, the market for AudioEye's securities promptly  
26 digested current information regarding AudioEye from all publicly available sources and  
27 reflected such information in AudioEye's securities prices. Under these circumstances, all  
28 purchasers and acquirers of AudioEye's securities during the Class Period suffered similar

1 injury through their purchase or acquisition of AudioEye's securities at artificially inflated  
2 prices and a presumption of reliance applies.

3 **THE STATUTORY SAFE HARBOR FOR**  
4 **FORWARD-LOOKING STATEMENTS IS INAPPLICABLE HERE**

5 46. The statutory safe harbor provided for forward-looking statements under certain  
6 circumstances does not apply to any of the allegedly false statements pleaded in this complaint.  
7 Many of the specific statements pleaded herein were not identified as "forward-looking  
8 statements" when made. To the extent there were any forward-looking statements, there were  
9 no meaningful cautionary statements identifying important factors that could cause actual  
10 results to differ materially from those in the purportedly forward-looking statements.  
11 Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking  
12 statements pleaded herein, Defendants are liable for those false forward-looking statements  
13 because at the time each of those forward-looking statements was made, the particular speaker  
14 knew that the particular forward-looking statement was false, and/or the forward-looking  
15 statement was authorized and/or approved by an executive officer of AudioEye who knew that  
16 those statements were false when made.

17 **COUNT I**

18 **Violation of Section 10(b) of the Exchange Act and**  
19 **Rule 10b-5 Promulgated Thereunder Against All Defendants**

20 47. Plaintiff repeats and realleges each and every allegation contained above as if  
21 fully set forth herein.

22 48. This Count is asserted by Plaintiff on behalf of itself and the Class against all  
23 the Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and  
24 Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder.

25 49. During the Class Period, the Defendants carried out a plan, scheme and course  
26 of conduct that was intended to and, throughout the Class Period, did: (i) deceive the investing  
27 public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate  
28 and maintain the market price of AudioEye's securities; and (iii) cause Plaintiff and other  
members of the Class to purchase or otherwise acquire AudioEye's securities at artificially

1 inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, the  
2 Defendants, and each of them, took the actions set forth herein.

3 50. Defendants, by use of means or instrumentalities of interstate commerce: (i)  
4 employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material  
5 fact and/or omitted to state material facts necessary to make the statements made not  
6 misleading; and (iii) engaged in acts, practices, and a course of business that operated as a  
7 fraud and deceit upon the purchasers and acquirers of the Company's securities in an effort to  
8 maintain artificially high market prices for AudioEye's securities in violation of Section 10(b)  
9 of the Exchange Act and Rule 10b-5.

10 51. As a result of their making and/or their substantial participation in the creation  
11 of affirmative statements and reports to the investing public, the Defendants had a duty to  
12 promptly disseminate truthful information that would be material to investors in compliance  
13 with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-K (17  
14 C.F.R. § 229.10, *et seq.*) and other SEC regulations, including accurate and truthful  
15 information with respect to the Company's operations and performance so that the market  
16 prices of the Company's publicly traded securities would be based on truthful, complete, and  
17 accurate information. Defendants' material misrepresentations and omissions as set forth  
18 herein violated that duty.

19 52. Defendants engaged in the fraudulent activity described above knowingly and  
20 intentionally or in such a reckless manner as to constitute willful deceit and fraud upon  
21 Plaintiff and the Class. The Defendants knowingly caused their reports and statements to  
22 contain misstatements and omissions of material fact as alleged herein.

23 53. As a result of Defendants' fraudulent activity, the market price of AudioEye  
24 securities was artificially inflated during the Class Period.

25 54. In ignorance of the true condition of AudioEye, Plaintiff and other members of  
26 the Class, relying on the integrity of the market and/or on the statements and reports of  
27 AudioEye's containing the misleading information, purchased or otherwise acquired AudioEye  
28 securities at artificially inflated prices during the Class Period.





1 of the Company, including the content and dissemination of the various statements that  
 2 Plaintiff contends are false and misleading. Individual Defendants were provided with or had  
 3 unlimited access to copies of the Company's internal reports, press releases, public filings, and  
 4 other statements alleged by Plaintiff to be misleading prior to and/or shortly after these  
 5 statements were issued and had the ability to prevent the issuance of the statements or cause  
 6 the statements to be corrected.

7 61. In particular, Individual Defendants had direct involvement in the day-to-day  
 8 operations of the Company and therefore are presumed to have had the power to control or  
 9 influence the particular transactions giving rise to the securities violations as alleged herein,  
 10 and exercised the same.

11 62. As set forth above, Individual Defendants and AudioEye committed a primary  
 12 violation of Section 10(b) and Rule 10b-5 of the Exchange Act by the acts and omissions  
 13 alleged in this Complaint. By virtue of their positions as controlling persons of AudioEye,  
 14 Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct  
 15 and proximate result of the Individual Defendants' wrongful conduct, Plaintiff and the other  
 16 members of the Class suffered damages in connection with their purchase or acquisition of  
 17 AudioEye securities during the Class Period.

#### 18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 20 A. Determining that this action is a proper class action;
- 21 B. Awarding compensatory damages in favor of Plaintiff and the other class  
 22 members against all Defendants, jointly and severally, for all damages sustained as a result of the  
 23 Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- 24 C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in  
 25 this action, including counsel fees and expert fees; and
- 26 D. Awarding such other and further relief as the Court may deem just and proper.

#### 27 **JURY DEMAND**

28 Plaintiff demands a trial by jury of all claims so triable.

1 DATED: April 20, 2015

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